2, Ch. 1, § 22; CHALLIS, REAL PROPERTY, 3 ed., 288. However, besides the estate tail general, only two classes of tails have become established in property law: an estate limited to the issue of the donee by a particular spouse, and one limited according to the sex of the issue. See CHALLIS, REAL PROPERTY, 3 ed., 290, 295. But other forms have been suggested. The court relied on a case of a gift to the heirs of the body of a man *in posterum procreandis*, where the eldest son was excluded. *Anonymous*, 3 Leon, 87. But there the youngest son took as purchaser. See 2 PRESTON, ESTATES, 450, 451. Coke mentions without comment a gift to a man and his heirs begotten by his son, as a tail special, which passes over a degree. See Co. LIT. 20 *b;* 2 PRESTON, ESTATES, 392, 421. And it is said there may be a tail to a man and the heirs of his body being Protestants. See 2 PRESTON, ESTATES, 362, 445. If those suggestions are sound, there is no stopping place. The donor of any estate confined to the issue of the donee may classify and discriminate between the issue as his fancy dictates; and the descent must follow the lines marked out, until the entail is barred. But there is a policy against the creation of novel estates. See *Johnson* v. *Whiton*, 159 Mass. 424, 426, 34 N. E. 542; Co. LIT. 27 *b;* 1 PRESTON, ESTATES, 472. And it seems more in accord with the present tendency of property law to allow only the established classes of estates tail.

ESTOPPEL *IN PAIS* — WHAT ACTS WILL ESTOP — FAILURE OF ASSIGNEE OF WRITTEN CONTRACT TO TAKE THE WRITING FROM ASSIGNOR. — The obligee of a written contract assigned his rights under the contract but retained the written instrument. The assignee notified the obligor of the assignment. Later an agent of the obligee presented the writing to the obligor and represented that there had been a reassignment. The obligor paid the agent. The assignee now sues on the contract. *Held*, that he is estopped to deny the validity of the payment. *Phelps* v. *Linnan*, 156 N. W. 294 (Ia.)

A person may be estopped not only to deny his own misrepresentation, but also in some cases to deny those he has enabled others to make. See EWART, ESTOPPEL, 19. Thus if a specialty, even though non-negotiable, is delivered to a third person who represents that he has authority to deal with it, the owner will be estopped to deny this authority against a person who has acted in reliance thereon. *Combes* v. *Chandler*, 33 Ohio St. 178; *Moore* v. *Metropolitan National Bank*, 55 N. Y. 41. But some courts do not raise an estoppel unless the instrument is such as by business custom passes freely. *Scollans* v. *Rollins*, 173 Mass. 275, 53 N. E. 863. And certainly the bailment of a chattel will never in itself create an estoppel. *McMahon* v. *Sloan*, 12 Pa. 229; *Ciannone* v. *Fleetwood*, 93 Ga. 491, 21 S. E. 76; *Baker* v. *Taylor*, 54 Minn. 71, 55 N. W. 823. The reason for these distinctions rests in the fundamental nature of the estoppel, the creation of which is dependent upon the deceptiveness of the situation and the fault of its creator, as opposed to the general policy of protecting property rights. Thus while the nature of chattels is such that possession is hardly more indicative of ownership than of bailment, the possession of a specialty, since the instrument is ordinarily of value only as proof of property rights, is a very strong indication of authority to pass title. A written contract presents a situation lying between those two extremes. For while possession is not a prerequisite to its enforcement, yet it is of no value except as evidence of rights therein. In the principal case, however, the assignee did not create the appearances by delivering the contract, but failed to prevent such appearances by neglecting to obtain the instrument. This however should not effect the creation of an estoppel, for given a sufficiently deceptive appearance, a duty should arise of affirmative, as well as negative action. See 18 HARV. L. REV. 140.

EVIDENCE — DOCUMENTS — SECONDARY EVIDENCE: NOTICE TO ACCUSED TO PRODUCE PRIVILEGED DOCUMENTS. — In a trial upon a charge of embezzle-

ment the prosecuting attorney stated in open court that a notice to produce an incriminating document had been served on the defendant, and asked the defendant if he had the paper in his possession. The court directed the jury to disregard the question and the statements. *Held*, that the admission of the evidence was error but was cured by the direction of the trial court. *People* v. *Gibson*, 55 N. Y. L. J. 573 (N. Y. Ct. of Appeals).

This *dictum* follows that of *McKnight* v. *United States*, 115 Fed. 972, 976. The court noticed the severe condemnation of that case by Professor Wigmore, but refused to be influenced. See 3 WIGMORE, EVIDENCE, § 2273, n. 3. For a criticism of the doctrine that a notice to produce documents in a criminal trial is in violation of the defendant's privilege against incrimination, see 29 HARV. L. REV. 211.

EVIDENCE — SUPPLEMENTING MEMORY — TESTIMONY OF BOOKKEEPER OF LARGE ESTABLISHMENT WHO HAS NO PERSONAL KNOWLEDGE OF FACTS RECORDED. — To prove an account against the defendant, plaintiff introduced in evidence the testimony of his bookkeeper, employed in a large mercantile establishment. The bookkeeper testified from his books, compiled from memoranda furnished by clerks, in the regular course of business, who alone had first-hand knowledge of the facts recorded. The memoranda had been destroyed by fire and the identity of the clerks lost. Over objection, the bookkeeper was permitted to supplement his memory from the records in his books, although he had no personal knowledge of the facts there recorded. *Held*, that there was no error. *Givens* v. *Pierson*, 167 Ky. 574, 181 S. W. 324.

For a discussion of the principles involved, see NOTES, p. 863.

FOREIGN CORPORATIONS — SERVICE OF PROCESS — JURISDICTION OVER CAUSE OF ACTION ARISING OUTSIDE THE STATE. — A foreign corporation doing business in the state appointed an agent to receive service of process, in accordance with state law. Service was made on this agent on a cause of action arising outside the state. *Held*, that a personal judgment may be founded on such service. *Bagdon* v. *Phila. & Reading Coal Co.*, 217 N. Y. 432.

Last year the Supreme Court held that where there had been no express appointment of an agent to receive process, it would be a denial of due process to extend the "implied" consent to a cause of action arising beyond the state. *Simon* v. *Southern Ry.*, 236 U. S. 115. See 28 HARV. L. REV. 804. Jurisdiction in the absence of express appointment has generally been justified on the ground that doing business in the state indicates a real consent to all valid conditions, as to service, etc., contained in state statutes. *St. Clair* v. *Cox*, 106 U. S. 350, 356. See BEALE, FOREIGN CORPORATIONS, § 266. It was urged upon the court in the principal case that in accordance with this doctrine, actual and implied consent must be coextensive, and that hence the *Simon* case compelled the court to hold the service invalid even where there was an agent expressly appointed. The court met the dilemma by declaring that "implied consent" is not real, but is the creature of law, and subject to such limitations as the law imposes, whereas consent in the principal case was actual, and voluntary. A recent case in the federal district court has taken the same distinction. *Smolik* v. *Phila. & Reading Coal Co.*, 222 Fed. 148. But see *Fry* v. *Denver & R. G. R. Co.*, 226 Fed. 893. A person may consent, it seems, to any kind of service, for any purpose. *Tharsis Sulphur Co.* v. *Société des Métaux*, 58 L. J. Q. B. 435; *Montgomery, Jones & Co.* v. *Liebenthal*, [1898] 1 Q. B. 487 (C. A.). If, therefore, consent in the principal case was voluntary, the reasoning of the court is irresistible. The power of the state to impose such a condition to the right of a foreign corporation to do business in the state is, however, doubtful, under the recent doctrine of "unconstitutional conditions." *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1; *Pullman Co.* v. *Kansas*, 216 U. S. 56. See *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 83.